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## **HB39 OWNERSHIP UPDATE STATUS SHEET**

### **Background**

HB39 (2007) revised the water right ownership update process requiring the DNRC and DOR to coordinate water right ownership records based on property transfers. The impetus for the bill was the 30% return mail (outdated ownership records) encountered in the billing process associated with HB22 (2005). The effective date of HB39 was July 1, 2008. Rep. McNutt's goal in requesting the legislation was to automate the process as much as possible.

### **Current Status**

The Water Rights Bureau reports the average number of ownership updates for the eight (8) years prior to the passage of HB39 was 4,621 ownership updates per year (excluding 2006). Since, HB39 the DNRC has been receiving an average of 6,039 ownership updates per year (a 31% increase). It's important to note ownership updates may be initiated through the sale of property or the result of researching return mail associated with the issuance of a Water Court Decree. The Montana Water Court has issued 25 decrees and 7 Compacts since the passage of HB39.

### **Implementation of the HB39 Ownership Update Process**

It was hoped the ownership update process between DOR's ORION system and DNRC's Water Rights Information System would allow some ownership updates to occur automatically. This is not the present state.

The DNRC and DOR have both modified their systems to accommodate two data elements to link DOR parcel records (geocode) and DNRC water right records (water right id). The effort to populate these data elements in each system is not complete. *Opinion: In the DNRC database the geocode is attached to the water*

*right record and not to the place of use. It is questionable whether an automatic process will ever be successful except in those instances where there is a single place of use and a single geocode.*

The timeliness of updates is another area of concern. The flowchart on the following page illustrates the current flow for the most common and simple transfer, i.e., all associated water rights transfer with the property.

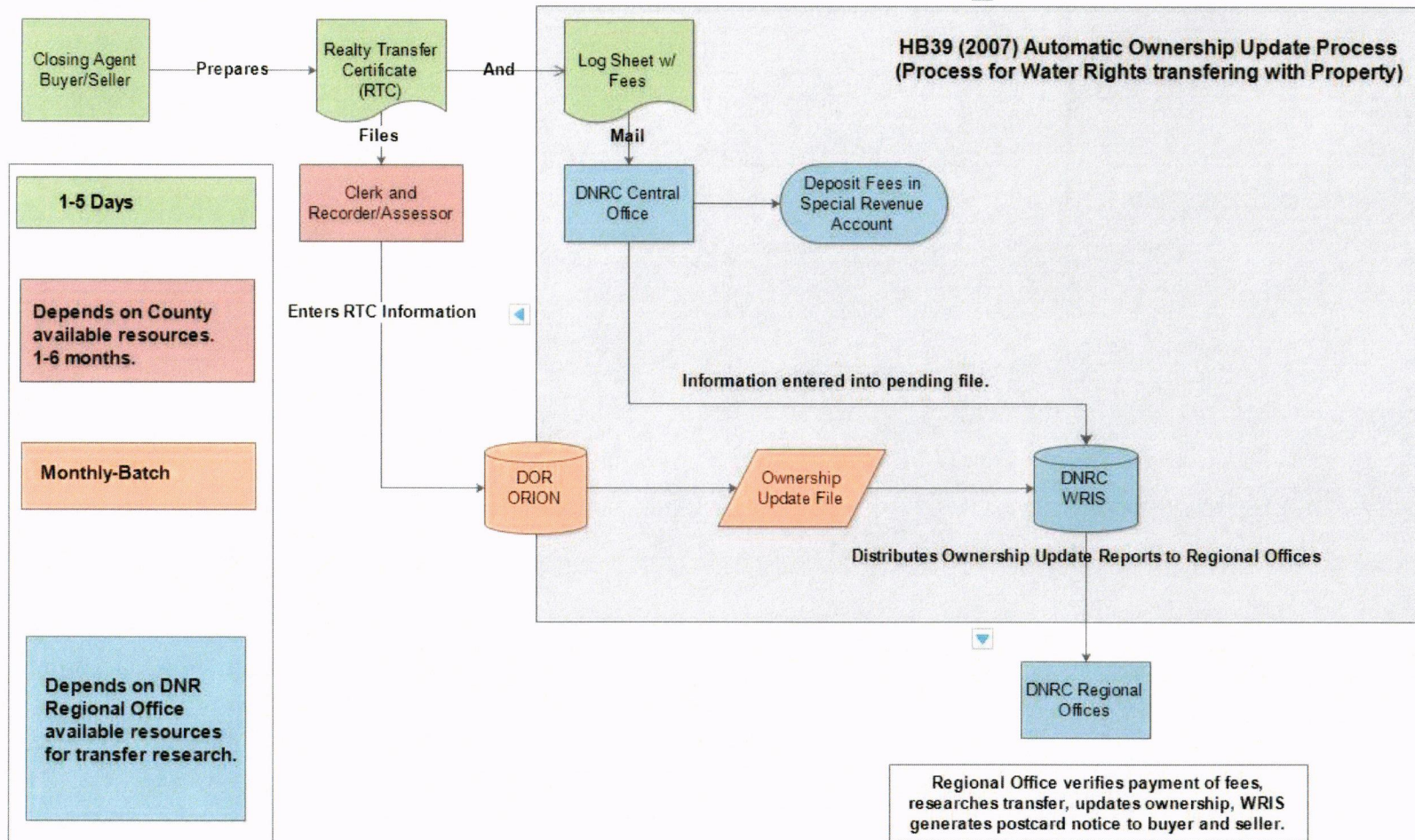
### **Where do we go from here?**

Now that the system has been in place for a number of years we can evaluate the success and challenges. The fees currently collected by DNRC to manage the ownership update are captured in a state special revenue fund. I would suggest that there are a number of elements that can be evaluated and potentially improved upon:

- (1) Is there a way to make county downloads more consistent? How much would this cost? Would the counties be willing/able to comply?
- (2) Is it possible to attach the geocode to the place of use? How much time, effort, money would this take? What would be the return on investment over time?
- (3) Would it be more cost/time efficient to identify one employee that does all ground-truthing on geocodes rather than being completed by the regional offices on a time availability basis?
- (4) How are the funds in the state special revenue account being used now? Would this revenue source be adequate for making changes and/or updates to the existing system?

Regards,

Krista Lee Evans  
Blake Creek Project Management



Processing Timeline

**From:** Krista Evans [mailto:blakecrk@gmail.com]  
**Sent:** Tuesday, December 10, 2019 10:12 AM  
**To:** Mohr, Jason <JasonMohr@mt.gov>  
**Subject:** [EXTERNAL] WPIC Comment

Jason --

Thank you for the opportunity to provide comment for the WPIC call/meeting scheduled for tomorrow. Please forward the following to the committee. Thank you. Krista

Dear Members of WPIC --

I am writing to provide comment regarding geocodes and their use in the water right ownership update process.

- 1) The deed trumps all. The statutes are clear that if the deed is silent the water transfers with the property. Entities that think that filing an ownership update form with DNRC transfers the water right are not correct. I would recommend working with the legal profession and the Title companies to improve education on this point.
- 2) This is not a new issue. Please see the memo that I provided to WPIC at their March 2016 meeting regarding HB 39. The issues in this memo still exist.
- 3) The geocodes serve a valuable purpose in that they provide notice to DNRC that property was transferred. The next level of analysis is where we appear to be having some challenges. I would strongly suggest that we retain the use of geocodes for the purpose of notification when property has transferred. The second phase of validation is where the process needs some adjustments. I would recommend that if there is any question about how much if any of the water right transferred with the property that DNRC contact the buyer and the seller. The current postcard method is not working. Often, buyers who have no understanding are making an uninformed statement when they say "sure, I own the water right". The questions to the buyers and sellers are going to have to be case and land transfer specific. I recognize that this comes with a cost both from a personnel standpoint and financial.
- 4) The accuracy of the database is critical due to the fact that it is this information that is used to provide public notice in the adjudication (decree issuance, etc) and for new appropriations and the opportunity to object. Without an accurate database there may be due process and proper notice questions.
- 5) There have been statements made that the geocodes are not part of the water right. It is important to note that the HB 110 exempt from filing claim forms had a line item for the geocode.
- 6) Any and all maps associated with a claim MUST be included in the claim file so that the information is available to DNRC, the Water Court, claimants, and others. This is important information that MUST be included in the claim file. DNRC has to have the whole picture in order to conduct an analysis to determine what water transfers.

7) DNRC can't "fix" some of these challenges. In situations where the Water Court has DECREED an over broad place of use it is impossible for DNRC to make corrections. Because it is decreed, only the Water Court can make corrections.

8) Based on comments reflected on the WPIC website it appears that DNRC sent out a survey. Blake Creek Project Management did not receive that survey and therefore is unable to respond.

I will not be able to attend the WPIC meeting/call on December 11. However, Blake Creek staff will be available to answer questions.

Krista

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